

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
vs.) **Case No. 11-CR-30118-SMY-1**
)
)
WALTER W. WALLACE,)
)
Defendant.)

MEMORANDUM AND ORDER

YANDLE, District Judge:

Now pending before the Court is Defendant Walter W. Wallace's Emergency Motion for Reconsideration of Compassionate Release (Doc. 76). Wallace's Motion for Compassionate Release pursuant to the First Step Act of 2018 was denied without prejudice on October 14, 2020 for failure to exhaust administrative remedies; Wallace did not wait 30 days from the submission of his request to his warden prior to filing his motion with the Court, as required by statute (Doc. 75).¹ Wallace was invited to refile his motion once he had fully exhausted his administrative remedies. *See* 18 U.S.C. § 3582(c)(1)(A).

Wallace now argues that he was not required to "completely exhaust the administrative process" or in the alternative, that the process is futile or should be excused. After this Court denied Wallace's motion, the Seventh Circuit held that while the exhaustion requirement in § 3582(c)(1)(A) is a mandatory claim-processing rule, it is an affirmative defense that must be properly invoked by the Government. *See, Sanford v. US*, 2021 WL 236622 (7th Cir. Jan. 25, 2021); *United States v. Gunn*, 980 F.3d 1178, 1179 (7th Cir. 2020). Accordingly, Wallace's

¹ Defendant submitted his request to prison staff members on May 18, 2020 and to the warden on May 21, 2020; he filed his motion with the Court within two weeks, on June 1, 2020.

Motion for Reconsideration is **GRANTED**.

The Court's Order denying Wallace's Motion for Compassionate Release (Doc. 75) is **VACATED** and the Clerk of Court is **DIRECTED** to reinstate the motion (Doc. 68) on the docket. The Government is **ORDERED** to respond to Wallace's motion with twenty-one (21) days after the motion is reinstated.

IT IS SO ORDERED.

DATED: February 4, 2021

A handwritten signature in black ink, appearing to read "Staci M. Yandle", is placed over a circular official seal. The seal contains an eagle with wings spread, holding a shield, surrounded by the text "UNITED STATES DISTRICT COURT" and "SOUTHERN DISTRICT OF" at the bottom.

STACI M. YANDLE
United States District Judge